IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

MFA.No. 37 of 2007()

WCC.493/2003 of W.C.C.,THRISSUR
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APPELLANT/OPPOSITE PARTY:

RAJAGOPALAN CHETTIYAR,
S/O. RAMAYYAN CHETTIYAR, VITHANASSERI,
NEMMARA P.O., PALAKKAD.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENT/APPLICANT:

PONNU, W/O. APPUKUTTAN,
CHITTAMPURAKKAL HOUSE, KACHERIPADAM,
VITHANASSERI, NEMMARA P.O., PALAKKAD.

BY ADV. SRI.D.ANIL KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.37 OF 2007 (D)

Dated this the 28th day of June, 2007

J U D G M E N T

KOSHY,J.

One Appukuttan who was working as a coolie in a rice mill on 23.6.2003 died in the course of employment. While he was hand overing tiles to the carpenter who are changing the roof tiles of the rice mill, the chimney of the mill collapsed and fell into the body of the deceased and he sustained injuries. He was taken immediately to the Nemmara Government Hospital. But on the way he died. His wife claimed compensation before the Commissioner for Workmen's Compensation Act, claiming that her husband sustained personal injuries due to an accident occurred during the course of employment and arising out of employment. According to her, he was 50 years at the time of accident and his monthly income was Rs.4,500/-. The Commissioner on evidence found that accident occurred during the course of employment and it is arising out of employment.

Appukuttan was employed by the opposite party as a workman. However, the monthly income submitted by the claimant was not accepted and Rs.2,600/- was taken as the monthly income and compensation was calculated.

2. It is contended that the appellant did not employ deceased Appukuttan on the relevant date and also further submitted that rice mill was closed during that period. But the fact that the chimney fell down and accident occurred and due to personal injuries caused in that accident Appukuttan died etc. are not disputed. According to the employer, who gave evidence as well as MW2, deceased came in search of the carpenter and at that time the accident occurred and the employer himself has made arrangements in taking the person to the hospital. The fact that the accident occurred inside the rice mill by falling of chimney while chimney was being repaired by the carpenter is not disputed. Then the employer has to prove to show that he came there not as a workman. His wife only knew that he went from the house only for working in the rice mill. Ext.A1 is the copy of the F.I.R.

registered at the Nemmara Police Station. F.I.R. was registered at the instance of one Kesavan who stated that while Appukuttan was working along with him in the mill of the employer accident occurred. He stated that, he as well as Appukuttan were giving tiles to the carpenter and during that time Appukuttan fell down. He also fell down and on the way to the Government hospital Appukuttan died. After consideration of F.I.Statement, evidence of witnesses, as a finding of fact, found that appellant was employed by the employer at the time of incident. In this case, there is a clear finding of fact by the Commissioner and finding cannot be stated to be perverse. Secondly it was contended that he was not a workman as defined under the Act. It is further contended that under Schedule II (viii) (a) to be workman he should be employed in any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof. Even though employer as well as another person who was examined as MWs.1 and 2, none of them have stated that the building was not above the ground or twelve feet or above

the apex roof. None of them stated that the building in question was below the standard mentioned in Section (viii) (a). No question was put to them in that regard. In the application it is stated that he was a workman and if the employer has got a case that he will not be covered under Section (viii) (a), it should have been proved by the appellant. Even though the initial burden is on the claimant, defence should be proved by the employer. Accident occurred in a mill while repairing a chimney and if it cannot come under Section (viii) (a), it will come under Section (ii) of Schedule II. In any event, no specific plea was also made by the employer before the Commissioner to the effect that employment of the deceased was not specified in the schedule. In these circumstances, we are of the view that no substantial question of law arises in this appeal so as to interfere and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

28th June, 2007